APPEAL NO. 030150
FILED MARCH 6, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing was held on December 17, 2002. The hearing officer determined that the appellant (claimant) sustained a compensable injury "in the form of a minor lumbar sprain/strain and minor cuts and scrapes to his forehead on _____," and that the claimant did not have disability.

The claimant appealed, contending that the hearing officer erred in finding that there was an "intervening injury on (date of 2nd injurious incident)." The claimant contends that "intervening injury was not an issue . . . but disability was." The respondent (carrier) responded urging affirmance.

DECISION

Affirmed.

The hearing officer determined, and it is largely undisputed, that the claimant sustained a compensable injury on _____, when he hit his head on a beam at work. The claimant contends that he was knocked unconscious, fell to the ground, and sustained an injury to his back and/or hip in addition to an obvious cut or scrape to his forehead. The hearing officer found the injury included the cut/scrape to the forehead and a minor lumbar sprain/strain. The claimant returned to work in a light-duty capacity on July 8, 2002. Whether the claimant "was limping around" or complaining of back and hip pain is in dispute. On Friday July 19, 2002, the claimant was denied an advance on his wages and commented that "I'm going to do what I gotta do." The claimant testified that on Monday (date of 2nd injurious incident), "when I went to pick up boxes and load the truck, I immediately felt the pain in my back." The claimant first saw a chiropractor who took him off work the next day, (date following 2nd injurious incident).

The claimant's entire appeal is premised on the fact that the hearing officer found an intervening injury and that "the hearing officer stated in Finding of Fact Number 4, that because of the *intervening injury* the claimant had disability (emphasis in the original). In fact, Finding of Fact No. 4 states:

> 4. Claimant was not able to obtain or retain employment at this pre-injury wages from (date following 2nd injurious incident), through July 31, 2002, from August 07, 2002, thorough November 15, 2002, for injuries other than the compensable injury dated _____.

The only time the hearing officer comments about an "intervening incident" is in the Statement of the Evidence, where the hearing officer comments on the claimant's

testimony regarding the (date of 2nd injurious incident), event "that caused Claimant to seek medical care and to have disability after (date of 2nd injurious incident)."

The 1989 Act provides that the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). Where there are conflicts in the evidence, the hearing officer resolves the conflicts and determines what facts the evidence has established. The hearing officer did not err in referring to the (date of 2nd injurious incident), incident. The hearing officer's decision is supported by the evidence and is not so against the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **COMMERCE & INDUSTRY INSURANCE COMPANY** and the name and address of its registered agent for service of process is

CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701.

_____
Thomas A. Knapp
Appeals Judge

CONCUR:

_____
Daniel R. Barry
Appeals Judge

_____
Chris Cowan
Appeals Judge